WP(C) 2947/2006

BEFORE

THE HON'BLE MR JUSTICE I A ANSARI

Heard Mr. C. Baruah, learned Senior counsel, appearing on behalf of the petitioner, and Mr. B. Banerjee, learned Govt. Advocate, appearing on behalf of the respondent Nos.1 and 2. Also heard Mr. RP Sharma, learned Senior counsel, appearing on behalf of the respondent No.3.

2. The petitioner's case may, in brief, be described thus: On 10.03.96, a piece of land measuring 2.5 hectors, at Yupia, was donated, by way of a gift-deed, to the petitioner by Nyakum Festival Committee of Yupia, (in short, 'the Committee'), the purpose of the donation being to establish a residential public school there. Prior to the donation of the said land, the Committee had been in possession of the land. Upon taking over possession of the said land, the petitioner developed the same by spending a huge amount of money and erected some constructions over about 800 sq. meters of the said land. In the month of December, 2005, respondent No.3, namely, National Building Construction Committee (the NBCC), all of a sudden, started running bulldozer over the said land of the petitioner. The petitioner raised objection to the running of the bulldogger by the NBCC. On 03.06.96, the petitioner was served with an order, dated 31.05.2006, passed, by the respondent No.2, namely, Deputy Commissioner, Papumpare district, Yupia, and from this order, the petitioner came to know that the petitioner's land had been allotted to the respondent No.3 for construction of a Circuit House and that when the petitioner had raised his objection to the taking over of the land by the respondent No.3, respondent No.2 had constituted a Committee and based on the report of the Committee, so constituted, respondent No.2 formed the opinion that there is no justified ground for the petitioner to object to, or stop, construction of the proposed Circuit House and that the land measuring about 800 sq. meters, which is about 25 meters away from the proposed Circuit House, was being temporarily left out. The petitioner challenges this order, dated 31.05.2006, on the ground that this order had been passed without giving any opportunity of showing cause or hearing to the petitioner.

3. This writ petition has been resisted by the respondents by contending, inter alia, that NBCC is a project implementing agency of the Central Government for the development of model district headquarter, at Yupia, and that the said project is completely funded by the Ministry of Urban Development, Govt. of India, that the land, in question, has been donated by the villagers concerned and that the writ petitioner has no right or title over the said land nor has any formal order of allotment of the said land been made, in his favour, by the Government; rather, but the District Authority, at Yupia, took over possession of the land way back on 28.09.94, in pursuance of a gift- deed and that the said land is the land, which has been selected for raising a Circuit House there. The dispute, raised by the petitioner, is, the respondents contend, pure and simple a dispute of civil nature and writ jurisdiction should not be exercised in such a case.

4. While considering the present writ petition, what needs to be noted is that the question as to whether the writ petitioner is or is not the owner of the land, in question, or as to whether he had or had not been in possession of the land is a question of fact or, at best, a mixed question of fact and law. The assertion of the writ petitioner that he is the owner and occupier of the land is seriously disputed by the respondent concerned. Such a disputed question of fact would require making of roving enquiry, which is not permissible in a writ proceeding of the present nature. Though the grievance of the petitioner is that the impugned order is illegal, because the same has been passed without giving the petitioner any opportunity of hearing or show cause, the fact remains that the allotment of the land for construction of the Circuit House precedes, admittedly, passing of the impugned order. The said order of allotment is not under challenge in the present writ petition. This apart, what is extremely important to not

e is that if, after giving a opportunity of showing cause or hearing to the petitioner, respondent No.2 comes to the conclusion that the petitioner is not the owner or occupier of the land, the petitioner, as conceded by Mr. C. Baruah, would not accept the verdict of respondent No.2. Situated thus, it is clear that the ultimate decision as to who owns the land and as to whether the respondents can be allowed to proceed with the construction are questions, which can be best answered by a Civil Court of competent jurisdiction. In these circumstances, the present writ petition cannot be held to be maintainable.

5. In the result and for the reasons discussed above, this writ petition fails and the same shall accordingly stand dismissed. The dismissal of this writ petition shall not, however, be treated as a bar for the petitioner to institute appropriate civil suit in a Court of competent jurisdiction and if, in such a suit, the petitioner seeks any order of injunction, the Court, which may come in seisin of the suit, would be competent to pass appropriate order(s) without being influenced by the fact that the present writ petition has been dismissed as not maintainable.

6. With the above observations and directions, this writ petition shall stand disposed of. The interim directions passed in this case, on 06.09.2006, shall accordingly stand vacated.

7. No order as to costs.